Maritime safety: discharge by the Member States of their obligations as flag States in accordance with the IMO Conventions

2005/0236(COD) - 23/11/2005 - Document attached to the procedure

COMMISSION'S IMPACT ASSESSMENT

For further information regarding the context of this issue, please refer to the summary of the Commission's proposal for a Directive of the European Parliament and of the Council on compliance with flag State requirements – COM(2005)0586.

1- POLICY OPTIONS AND IMPACTS

The Commission considered five potential policy options.

1.1- Option 1: 'no change': there would be no advantage in perpetuating the current situation and, if this option were the chosen one, it would risk creating new distortions between Member States.

1.2- Option 2: amend Directive 94/57/EC: the option of an amendment to Directive 94/57/EC containing a reference to Resolution A.847 (20) of the IMO (the International Maritime Organisation) was not retained since the Directive in question specifically deals with inspection and the certification of vessels.

1.3- Option 3: creation of an *ad hoc* system to audit the flag states of the EU: this system would be managed by the European Maritime Safety Agency. Any control to meet the recommended objectives can only be effective when done on the basis of well-defined standards and when it covers all of the contracting parties to the conventions. The IMO's Code and the independent audit system recognised by the IMO meet these requirements.

1.4- Option 4: individual action on the part of the Member States: this option involves Community action encouraging the Member States, on a case by case basis, to improve their respective levels of performance to comply with the requirements of the flag states laid down by the IMO. The main argument against this cooperation option is illustrated by experience of the Paris Memorandum. This was drawn up in 1982 to apply - in a non-discriminatory way - the IMO's guidelines regarding Port State control. Effective controls, non-discriminatory practices between Member States and, in particular, the allocation of resources to enable the Memorandum's objectives to be met, could only be achieved by the incorporation, in 1995, of the IMO's guidelines into Community legislation. Despite the good intentions of those responsible for maritime administrations, due to the lack of legal base, the majority of the Memorandum's signatories were unable to convince their governments to honour the undertakings to which they had signed up. Since then, it is only because of Directive 95/21/EC that the Paris Memorandum has operated in a satisfactory manner.

1.5- Option 5: Community legislation: this would involve a new directive introducing into Community law minimum obligations of flag states that Member States have to respect in accordance with IMO requirements. When discussions took place within the IMO, as well as in the Council, the Member States announced their intention to accede to the IMO system and to approve, in November 2005, at the IMO's general meeting, the flag states' code and audit system.

This option takes into account all the results and the decisions reached within the IMO. According to certain Member States, the incorporation within Community legislation of the flag states' code and the audit system is the only measure that they are in a position to recommend to the Commission in view of the need to improve flag states' performance.

This option permits the unequivocal identification of all relevant international conventions, as well as the creation of a binding framework to ensure the consistent auditing of the way in which States enforce the obligations arising from international conventions on maritime safety, on seafarers' qualifications and on the prevention of pollution.

CONCLUSION: **Option 5, the option favoured by the Commission, offers important advantages:** costs are low, competitiveness is improved, environmental protection is enhanced and the attraction of seafaring careers is revived. Moreover, by means of this proposal, the Commission, using a single instrument, is able to go further than existing international regulation without creating new expensive obligations for Member States.

IMPACT

Social impact: a flag becomes socially attractive and creates employment when the social conditions offered to seafarers conform to the security standards contained in international conventions. Their conformity to the international social standards can be checked by national maritime seafarer training institutes prior to the recruitment of their nationals. Furthermore, it will be subject to regular evaluation by means of audits.

Environmental impact: the improvement of maritime safety involves better environmental protection which, in turn, contributes to reducing the number of maritime accidents and incidents throughout the world, with all the positive effects which result from this at macroeconomic level. Moreover, the establishment of a quality system and the practice of an audit of the flag states contribute to improving their performance in the enforcement of international conventions.

The costs of non-action are considerable: significant costs will be saved in relation to the financing of the rehabilitation of polluted environments.

Economic impacton maritime administrations: the Commission is aware of the cost involved in the setting up of appropriate maritime administrations that are able to meet international and Community regulatory requirements and constraints. However, these costs do not generate distortions of competition or any additional barriers to the maritime transport market. Indeed, any costs that might arise would only relate to improving the efficiency of maritime administrations.

2- FOLLOW-UP

A Directive has the advantage of being subject to the automatic system that controls the application of Community law, introduced by the Commission several years ago.

Two types of controls are planned:

- audits of the flag states carried out under the aegis of the International Maritime Organisation to which the Commission will be party as an observer;
- publication of the results of the audits: that will enable any areas of weakness or of non-conformity to be identified and appropriate action to be taken; this will mean the best performing flag States will benefit from lighter controls imposed by Port states. To this end, several Member States (the United Kingdom, Cyprus and the Netherlands) have already agreed, of their own volition, to subject themselves to the audit of their flag.